

**REMARKS OF REPRESENTATIVE TERRY MUSSER
TO THE SENATE COMMITTEE ON EDUCATION**

October 18, 2007

2007 Senate Bill 98

Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils

I am Representative Terry Musser, 92nd Assembly District. I serve as chair of the Joint Legislative Council's Special Committee on State-Tribal Relations. The Council is required by statute to create the committee each biennium to study issues related to American Indians and American Indian tribes in Wisconsin and to make recommendations to the Legislature. Senate Bill 98 was recommended by the Special Committee to the Council, and the Council then introduced the bill.

Senate Bill 98 relates to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils. In case you did not know, there are currently three tribal schools in Wisconsin.

This bill is basically the same as the bill recommended by the committee and introduced by the Council last session—except for technical changes to reflect the fact that sections amended by the prior bill were affected by unrelated legislation last session and the fact that a couple of new statutes related to private schools were passed last session that had to be included in the current bill.

I will not take up your time listing all the statutes in the bill. The notes in the bill do that. But, here are some examples. The bill:

- Permits certain tribal school pupils to serve as inspectors at polling stations on the same basis as public and private school pupils.
- Authorizes a technical college system district board to contract with tribal schools to provide certain services, as it can with public and private schools.
- Includes tribal schools in DPI's programs to assist public and private schools in developing suicide prevention programs, AODA programs, and protective behavior programs.
- Includes teachers at a tribal school as eligible for grants if they are certified by the National Board for Professional Teaching Standards and meet other criteria--just like private school teachers.
- Makes seniors at a tribal school eligible for the Academic Excellence Higher Education Scholarships Program--just like private and public school seniors.
- Makes it clear that pupils attending a tribal school are not truant.
- Lets an employee at a tribal school who has been exposed to certain bodily fluids get the results of HIV tests, just like an employee of a public or private school.
- Adds tribal schools to the list of those who may request information about persons on the sex offender registry so that they are treated like public and private schools.

The list could go on and on.

Why did current law get to be the way it is? Why doesn't it include tribal schools? In most cases, I think there was just no thought given to including tribal schools in a particular statute, rather

than some considered decision that a tribal school or its pupils and staff should not receive the benefits or protections that apply to private schools.

STRUCTURE OF THE BILL

Two comments about the structure of the bill:

First, most of the statutes in the bill are statutes that provide a benefit or protection to private schools. They were changed by inserting a reference to tribal schools.

Second, that approach would not work for statutes that link a benefit provided to a requirement imposed. The reason is that, in most cases, it is likely that a court would hold that the state has no authority to impose a requirement on a tribal school--because of tribal sovereignty and sovereign immunity. Because linkage of a benefit provided and requirement imposed seemed appropriate, a different approach was needed for those types of statutes. Let me give you an example: there are statutes that authorize law enforcement or social services agencies to provide certain otherwise confidential information to public and private schools, but the public and private school officials are then required to keep the information confidential under a certain statute. While it seems appropriate to get that information to a tribal school too, the pupil's confidentiality needed to be protected from further disclosure. The solution? The bill says that the confidential information can be provided to tribal school officials if it is determined that the tribe has enforceable protections to keep the information confidential in the same manner as required of public and private school officials under state law. This approach recognizes tribal sovereignty by not requiring a tribal school to do anything, but a tribe can voluntarily comply with these conditions if it wants to receive the associated benefit.

WHAT IS NOT INCLUDED IN THE BILL

Along the same vein and in the interest of full disclosure, I want to point out that the bill does not require a tribal school to do anything. It does not apply the statutes that impose requirements on private schools to tribal schools. For example, the statutes require private schools to have a first aid kit and have lead inspections in kindergarten. These statutes were not amended to apply to tribal schools because principles of tribal sovereignty would not permit that.

Also, there are four benefits that the bill does not extend to tribal schools or tribal school pupils. The two most significant relate to special education and transportation of pupils. The current three tribal schools are funded in part by the federal Bureau of Indian Affairs and receive some federal aid for both special education and transportation. Plus, these are both very complex areas of law. Because there was not an easy answer as to how to integrate tribal schools into the mix under these state statutes in the same manner as private schools, these topics were not included in the bill. Also not included in the bill are any statutes relating to the private schools in the City of Milwaukee (like the Choice schools) or eligibility for WHEDA bonding--which was not of interest to tribal officials.

SUMMARY

In summary, Senate Bill 98 is about fairness to and recognition of tribal schools. The benefits and protections included in the bill seem sensible to extend to all tribal schools and their pupils and staff. Plus, the bill does this in a way that is mindful of tribal sovereignty by not imposing requirements on tribal schools.

I hope that you will give the bill a favorable recommendation so that it can move to the Senate floor for consideration soon.

I would be happy to respond to your questions. Joyce Kiel and David Lovell of the Legislative Council Staff are staff to the Special Committee and can respond to any technical questions.